

# DAKOTA NURSE

C O N N E C T I O N



## **Frequently Asked Questions:**

*Requirements for Licensure by Examination*

## **Social Media Policies for Employers and Employees:**

*Regulatory and Statutory considerations*

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# DAKOTA NURSE

C O N N E C T I O N

SPRING 2016

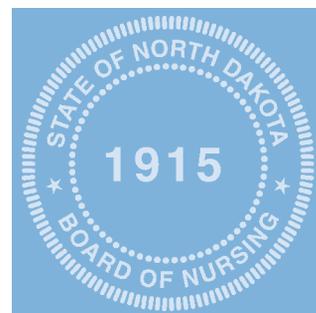
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Dakota Nurse Connection circulation includes over 28,000 licensed nurses, hospital executives and nursing school administrators in North and South Dakota.



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## *A message from the Executive Director*

Gloria Damgaard, RN, MS, FRE  
South Dakota Board of Nursing

My message to all of our readers of the Dakota Nurse Connection this Spring is the Board of Nursing report of the 2016 Legislative Session. We made significant changes to the Nurse Practice Act in South Dakota this year including the adoption of the Enhanced Nurse Licensure Compact (NLC) as well as several updates to the Practice Act.

South Dakota became the 1<sup>st</sup> state in the nation to adopt the enhanced nurse licensure compact during the 2016 SD Legislative Session. Senate Bill 29, an act to update the nurse practice act and to adopt a new interstate nurse licensure compact was signed into law by Governor Dennis Daugaard on February 16, 2016. Six states have now enacted the new compact. They include: South Dakota, Wyoming, Idaho, Tennessee, Virginia and Florida. Florida and Wyoming are states that are not part of the current nurse licensure compact. They will join when the enhanced nurse licensure compact goes into effect on **the earlier of the date of legislative enactment by 26 states or by December 31, 2018**. It is anticipated that more states will be enacting legislation in the 2016 and 2017 legislative sessions across the country. Until such time as the new compact becomes effective, the current NLC will remain in effect.

In May of 2015, Boards of Nursing in the United States and territories as members of the National Council of State Boards of Nursing (NCSBN) voted to make revisions to the current NLC. This was done to reduce the barriers that have prevented states from joining and to require uniform licensure standards



*Ceremonial Signing of SB 29: Governor Daugaard, Members and Staff of the Board of Nursing.*

as part of the statutory language of the compact. The major changes that are made in the Enhanced NLC include the standards for eligibility and uniform requirements for a multistate license. These standards include:

- Criminal Background Checks (New)
- Graduation from a licensing board approved RN or LPN/VN Program
- Successful completion of NCLEX-RN® or NCLEX-PN® or recognized predecessor exam
- Holds an active unencumbered license
- Does not have a felony conviction (New)
- Not currently enrolled in an alternative to discipline program (New)
- Has a valid US Social Security Number (New)

At the time that the Enhanced NLC becomes effective, any nurse holding a multistate license issued by the nurse's home state may retain and renew that multistate license in that state. If the nurse changes primary state of residence, he or she must meet all of the new requirements in order to obtain a multistate license

in the new state. If a nurse has a disqualifying event that occurs after the effective date of the Enhanced NLC, he or she will be ineligible to retain or renew a multistate license. Examples of a disqualifying event would be a felony conviction or participation in an alternative to discipline program.

Another new addition to the Enhanced NLC is the establishment of the Interstate Commission of Nurse Licensure Compact Administrators. The commission consists of one administrator from each state that is part of the Enhanced NLC. This administrator is the head of the state licensing board or a board designee. An important change with the Enhanced NLC is that the Commission has the authority to promulgate rules. There is a specific procedure identified in the new law that the Commission must follow when promulgating rules. Rulemaking is administrative and procedural for the efficient implementation of the compact and operation of the commission.

Although this law was just enacted in the 2016 Legislative Session, it is important for nurses and employers to know that the

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## A message from the Executive Director

Stacey Pfenning, DNP, APRN, FNP  
North Dakota Board of Nursing

Greetings and welcome to the Spring edition of the *Dakota Nurse Connection*, the official publication of the North Dakota Board of Nursing (NDBON).

The NDBON approved the 2014-2015 Annual Report during the January convened meeting. This report is available at [www.ndbon.org](http://www.ndbon.org). Highlights of the NDBON Annual Report include the following:

- Total number of licensed nurses: 18,462
  - 3,797 LPN
  - 13,464 RN
  - 1, 070 APRN
  - 126 APRN only-RN in other compact state
  - 5 SPRN (Specialty Practice RN)
- Nursing Education Loan Program disbursements: \$92,510.
- Approved 119 continuing education programs for nurses.
- Completed 185 continuing education audits for license renewals.
- Education Program Approval surveys:
  - University of Jamestown Bachelor of Science in Nursing Program
  - Concordia College Bachelor of Arts Nursing Program
- Nursing education programs reported the following enrollments:
  - 348 practical nursing students
  - 1, 628 registered nursing students
  - 303 graduate level nursing students
- Investigative & Disciplinary statistics: 28 reprimands, 11 probations, 15 suspensions, 19 Surrenders, 6 denial of licensures, and 5 cease and desists.

As an update, the prescription drug monitoring program (PDMP) rule promulgation continues to move

forward. The goal of the rule making was to meet the requirements of HB 1149 which passed during the 64<sup>th</sup> legislative assembly, charging the licensing Boards with setting PDMP utilization rules. During the rule making process, the NDBON collaborated with ND Board of Medicine, Board of Dental Examiners, Optometry, and Board of Pharmacy. The original collaborative draft was individualized to each licensing Board. The ND Nurse Anesthetist, ND Nurses, and ND Nurse Practitioner Associations contributed to the nursing PDMP rules, along with the ND Center for Nursing and several nurse prescribers in various settings. The NDBON held 2 open, noticed meetings and 1 open public forum. Testimony was accepted December 21, 2015 through February 4, 2016.

During the March meeting, the NDBON approved to finally adopt the proposed rule revision to NDAC chapter 54-01-03 definitions and chapter 54-05-03.1 Advanced Practice Registered Nurse Section 54-05-03.1-10 authority to prescribe. The rules will be submitted to the Attorney General for opinion in April and be presented to the ND Administrative Rules Committee. The NDBON will send information to licensee's once the rules force and effective date is established.

The Board and staff will be in touch this summer to provide regulatory updates and publications in the next edition of the *Dakota Nurse Connection*.

Sincerely,  
Dr. Stacey Pfenning DNP APRN FNP

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*Mission*  
 The mission of the North Dakota Board of Nursing is to assure North Dakota citizens quality nursing care through the regulation of standards for nursing education, licensure and practice.

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You can contact anyone at the Board of Nursing by e-mail.

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### NORTH DAKOTA BOARD OF NURSING 2016 BOARD MEETING DATES

May 19, 2016

July 21, 2016 Annual Meeting

As a service to the citizens of North Dakota, the Board of Nursing provides a PUBLIC FORUM during each board meeting. This is a time when anyone may address the board about any issue regarding nursing. Prior notification is not necessary. Individuals will be recognized in the order of their signature on a roster available at the board meeting. The time of the Public Forum for the 2015-2016 board meetings is 11:00 a.m. the day of the board meeting.

### PROVISION of HIGH QUALITY NURSING CARE

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- \* Emerging Issues in Nursing (Social Media & Maintaining Mental Health in Nursing)
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Patricia Hill, BSN, RN  
 Stacey Pfenning, DNP, APRN,  
 Family Nurse Practitioner

Length of Presentation(s): 60 minutes each.

Fee: \$100 per presentation plus mileage.

Contact Hours: One contact hour each, except Standards of Practice and Code of Ethics is 2.3 contact hours.

Delegating Effectively is 2 contact hours.

Approved by the North Dakota Board of Nursing.

### NURSES *Have you moved recently?*

Update your address on the N.D. Board of Nursing Web site: [www.ndbon.org](http://www.ndbon.org)  
 Choose **Demographic Updates** under **Nurse Licensure**

### NORTH DAKOTA BOARD OF NURSING "CARDLESS" FOR PUBLIC SAFETY Wallet licensure cards are no longer issued for:

- RN & LPN Renewal License by Examination
  - License by Endorsement
  - UAP/Technician/Medication Assistant III
- [www.ndbon.org](http://www.ndbon.org)

### LICENSURE VERIFICATION

**North Dakota License Verification Options**

The North Dakota Board of Nursing provides the following options for individuals attempting to verify a ND nursing license:

- North Dakota Board of Nursing Website – go to [www.ndbon.org](http://www.ndbon.org) and choose "Verify."
- Nursys® Nurses' Verification. For participating states, go to [www.nursys.com](http://www.nursys.com). Choose Licensure QuickConfirm.
- E-notify – database for verification of licensure at [nursysnotify@ncsb.org](mailto:nursysnotify@ncsb.org)

## NORTH DAKOTA BOARD HIGHLIGHTS

### January 2016

- Accepted the July 1, 2015 to December 31, 2015 Strategic Plan Progress Report.
- Accepted the 2014-2015 Annual Report as distributed.
- Accepted the University of Mary notification of major programmatic changes for the LPN to BSN program as the program has full approval from the ND Board of Nursing and the programmatic changes are in compliance with NDAC 54-03.2-06-02. Programmatic changes.
- Accepted the Dakota College at Bottineau, Dakota Nursing Program request for addition of a distance site for the practical nursing program at the Quentin Burdick Job Corps Center in Minot ND beginning fall 2016 as the program has full approval from the ND Board of Nursing and the programmatic changes are in compliance with NDAC 54-03.2-06-02. Programmatic changes.
- Accepted the Turtle Mountain Community College AASPN program plan addressing the deficiency of non-compliance with NDAC 54-03.2-02-05. Performance of graduates on licensing exam and require the program administrator to submit a progress report with pre-survey report for upcoming on-site survey.
- Moved that the board:
  1. Find the compliance report submitted by Turtle Mountain Community College AASPN program addressing the deficiency of partial compliance with NDAC 54-03.2-02-05. Nursing education program evaluation does not meet the standard; and
  2. Find Turtle Mountain Community College AASPN program to be in partial compliance with ND Administrative code 54-03.2; and
  3. Require Turtle Mountain Community College AASPN program administrator to submit a compliance report with pre-survey report for upcoming on-site survey, addressing non-compliance with NDAC 54-03.2-02-05. Nursing education program evaluation.
    - A. Report to provide an evaluation plan document that includes timelines, methods, expected levels of achievement, maintenance and revision of the program. The plan must include program and student learning outcomes, multiple measures of student success after graduation, licensing examination pass rates, and evaluation of program resources.
- Accepted placement of Turtle Mountain Community College AASPN program

on conditional approval status until September 2016, at which time the ND Board of Nursing will determine whether stated deficiencies have been sufficiently corrected.

- The Board requires a full on-site survey of the Turtle Mountain Community College AASPN program in fall 2016 to allow program time to work toward compliance of 54-03.2-02-05. Nursing education program evaluation and 54-03.2-02-05. Performance of graduates on licensing exam. The program administrator must submit the pre-survey report by July 15, 2016.
- Approved the 2014-2015 Education Annual Report pending review by program directors.
- Denied the request for distribution of e-mail addresses from the licensure database from the Minnesota State University Moorhead student for thesis research project pending review of final documents by board staff and including requiring submission of the completed thesis.
- The Board ratified nursing practice hours for care of family members for the following:

Name	License #
Gero, Barbara	R18813
2015 hours	2014 hours
200	212
2013 hours	2012 hours
56	88

## NORTH DAKOTA BOARD HIGHLIGHTS

### March 2016

- The board discussed an e-mail concern regarding a newly advertised “cuddling” business in Bismarck/Mandan area. The concern related to the nature of the “cuddling” services and whether there was appropriate certification, training, oversight or even licensure for such services. The board reviewed and discussed the specific concerns addressed in the e-mail. No action taken.
- The Board accepted the following Nursing Education Committee recommendation:
  - Find the Minot State University Baccalaureate Degree Nursing Education Program in substantial compliance with NDAC 54-03.2. standards for Nursing Education programs; and
  - Granted full approval of the Minot State University Baccalaureate Degree Nursing Education Program until March 2021, and require a paper/ interim survey in 2021.
- The Board accepted the Nursing Education Committee recommendation to approve the Lake Region State College Dakota Nursing Program request for inclusion of the completion option of Practical Nurse Certificate for the Paramedic to Nursing Bridge Program Innovative Nursing Education Project as the program has full approval

from the ND Board of Nursing and the programmatic changes are in compliance with NDAC 54-03.2-06-02. Programmatic Changes.

- A letter of concern was issued to Concordia University – WI MSN Nurse Practitioner Program in Mequon, WI for placing two NP students in ND for clinical practicum experiences without out-of-state program recognition for the 2015-2016 academic year. It was noted there was a change in coordinator position in the program. The program submitted all required documents to meet recognition status for 2015-2016 and is now in compliance.

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- A letter of concern was issued to Creighton University MSN Nurse Practitioner Program in Omaha, NE for placing two NP students in ND for clinical practicum experiences without out-of-state program recognition for the 2015-2016 academic year. The program submitted all required documents to meet recognition status for 2015-2016 and is now in compliance.
- A letter of concern was issued to Simmons College MSN Nurse Practitioner Program in Boston, MA, for placing a NP student in ND for clinical practicum experiences without out-of-state program recognition for the 2015-2016 academic year. It was noted there was a change in clinical placement specialist in the program. The program submitted all required documents to meet recognition status for 2015-2016 and is now in compliance.
- The Nursing Education Committee recommended the board accept the University of North Dakota

Baccalaureate Degree Nursing Education Program request for approval of revised program outcomes as the program has full approval from the ND Board of Nursing and the programmatic changes are in compliance with NDAC 54-03.2-06-02. Programmatic Changes.

- The Board approved the following Nursing Education Committee recommendation:
  - Find the TrainND North East of Lake Region State College LPN Intravenous Therapy course in full compliance with requirements for the LPN Intravenous Therapy Course according to NDAC 54-05-01. standards of practice for licensed practical nurses and NDAC 54-03.2 standards for nursing education programs; and
  - Granted full approval of the TrainND North East of Lake Region State College LPN Intravenous Therapy Course until March 2020.
- The Nursing Education Committee recommended the board approve the Proposed Revisions to the Nursing Education Loan Policy.

- The Board motioned to discontinue the release of all licensee exempt data with the exception of ND Center for Nursing, Dakota Nurse Connection, North Dakota Nurse, and Federal and State agencies and direct staff to draft a new policy to reflect board discussion.
- The Board motioned to archive the document "Process for use of Board of Nursing data base for research proposals."
- The Board motioned to finally adopt the revised administrative rules NDAC chapter 54-01-03 definitions and chapter 54-05-03.1 advanced practice registered nurse section 54-05-03.1-10 authority to prescribe subject to the attorney general review as to the legality.
- The Board directed staff to publish the notice from the national transportation safety board related to the healthcare provider responsibility for education of potential risk that drugs and medical conditions can create when patients are operating a vehicle in any mode of transportation in the Dakota Nurse Connection and post on the website under news and hot topics.

- Emergency Department
- 5th Floor Telemetry
- ICU/SCCU
- General Surgical
- Med/Surg/Ortho
- Rehab
- Float Pool
- Psychiatry
- NICU
- Family Birthing Center
- Women & Children
- Oncology/Renal
- Renal Dialysis
- Surgery
- Same Day Surgery
- Ambulatory Procedures
- Case Management
- Clinic Office Nurses
- Nurse Practitioners



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## Five Reasons to Endorse the NLC

### The NLC clarifies the authority to practice for many nurses currently engaged in telenursing or interstate practice.

*From the Institute of Medicine's 2010 report, "The Future of Nursing: Leading Change, Advancing Health":*

There is perhaps no greater opportunity to transform practice than through technology. Information technology has long been used to support billing and payments but has become increasingly important in the provision of care as an aid to documentation and decision making. Diagnostic and monitoring machines have proven invaluable in the treatment of cancer, heart disease and many other ailments. Examples cited by the IOM in *Crossing the Quality Chasm: A New Health System for the 21st Century* include "growing evidence that automated order entry systems can reduce errors in drug prescribing and dosing" and "improvements in timeliness through the use of Internet-based communication (i.e., e-visits, telemedicine) and immediate access to automated clinical information, diagnostic tests, and treatment results" (IOM, 2001). Since that report was published, the expanded use of online communication has resulted in so called telehealth services that are not limited to diagnosis or treatment but also include health promotion, follow-up, and coordination of care. Delivery of telehealth services has, however, like that of APRN services, been complicated by variability in state regulations, particularly whenever online communications cross state lines. (p. 136)

### Key Message #1: Nurses Should Practice to the Full Extent of Their Education and Training (Chapter 3)

Nurses have great potential to lead innovative strategies to improve the health care system. However, a variety of historical, regulatory, and policy barriers have limited nurses' ability to generate widespread transformation... Many of these barriers have developed as a result of structural flaws in the U.S. health care system; others reflect limitations in the present work environment or the capacity and demographic makeup of the nursing workforce itself. Regulatory barriers are particularly problematic.... Removing regulatory, policy, and financial barriers to promote patient choice and patient-centered care should be foundational in the building of a reformed health care system. (pp. 4-6)

### The NLC provides greater mobility for nurses.

*From the U.S. Department of Health and Human Services Health Resources and Services Administration's 2010 report, "Health Licensing Board Report to Congress":*

Licensure portability is seen as one element in the panoply of strategies needed to improve access to quality health care services through the deployment of telehealth and other electronic practice services (e-care or e-health services) in this country. But licensure portability goes beyond improving the efficiency and effectiveness of electronic practice services. Overcoming unnecessary licensure barriers to cross-state practice is seen as part of a general strategy to expedite the mobility of health professionals in order to address

workforce needs and improve access to health care services, particularly in light of increasing shortages of healthcare professionals. It is also seen as a way of improving the efficiency of the licensing system in this country so that scarce resources can be better used in the disciplinary and enforcement activities of state boards, rather than in duplicative licensing processes. (p. 1)

### The NLC improves access to licensed nurses during a disaster or other times of great need for qualified nursing services.

*From the American Red Cross' 2011 report, "Disaster Services Program Review":*

The spring of 2011 brought the worst outbreaks of deadly tornadoes in decades. More than a one thousand tornadoes were reported, prompting 28 Red Cross disaster operations in 18 states across the country. Within hours of these disasters nearly 64,000 health and mental health contacts were made. The Red Cross needs to be prepared to utilize as many nurses across state lines as needed to care for those in distress. Currently 5,000 Red Cross nurses out of the total pool of approximately 4.5 million registered nurses and licensed practical nurses provide disaster health services within their licensure, scope of practice, assessing and intervening as they have been prepared to do by their education and experience. (p. 6)

*From the American Hospital Association's 2000 report, "Hospital Preparedness for Mass Casualties":*

Licensure of health professionals is generally conducted on a state-by-state basis. Licensure practices limit the

flexibility and availability of potential staff. Nursing licensure bodies could increase preparedness by adopting similar procedures or by adopting the "Nursing Compact" presently being implemented by several states. (p. 24)

### The NLC improves access to nursing care.

*From the National Governors Association Center for Best Practices' 2008 report, "Annual Report and Recommendations from the State Alliance for e-Health":*

The State Alliance thoroughly examined the opportunities and challenges in pursuing options for multistate practice and e-health expansion. Among these were licensure structures to support cross-state e-health consultations, and remote delivery of health care services; the need to enable mail-order pharmacies, telehealth, and telemedicine; and the potential of the current Nurse Licensure Compact as a model for other health professions. Given the level of activity across the country of state nursing boards supporting the NLC and the NLC's benefits to enabling e-health, the State Alliance encourages the remaining state nursing boards to join the compact.

Governors and state legislatures should direct the state's nursing board to participate in the NLC, given the importance of the NLC for e-health purposes. Governors and state legislatures should provide financial support to the nursing boards for the initial implementation of the NLC and ensure that the boards are funded at levels needed to assure public protection operations. (p.36)

### The NLC enhances discipline and information-sharing among participating NLC states.

NCSBN's Nursys® database (www.nursys.com) provides licensure and disciplinary information for registered nurses (RNs) and licensed practical/vocational nurses (LPN/VNs). Per an NLC statute, all compact states transmit and access significant investigative information through Nursys, therefore making this data readily accessible as

soon as it is entered into the database. This improves the BON's ability to act in a timely manner and in many states, prevents nurses with pending actions from moving to another state (their application will be held in abeyance until a final action has been rendered in the NLC party state).

### Organizations that Endorse the NLC

- American Academy of Ambulatory Care Nursing
- American Association of Occupational Health Nurses
- American Hospital Association
- American Nephrology Nurses Association
- American Organization of Nurse Executives
- American Telemedicine Association
- Population Health Alliance
- Case Management Society of America
- Center for Telehealth & e-Health Law
- Emergency Nurses Association
- National Military Family Association
- State Alliance for e-Health of the National Governors Association Center for Best Practices
- U.S. Department of Commerce
- Air & Surface Transport Nurses Association
- American Association of Colleges of Nursing
- American Association of Poison Control Centers
- Association for Vascular Access
- Association of Camp Nurses
- Citizen Advocacy Center (CAC)
- Commission for Case Manager Certification
- Telehealth Leadership Council

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For more information about the NLC, visit [www.ncsbn.org/nlc](http://www.ncsbn.org/nlc) or email [nursecompact@ncsbn.org](mailto:nursecompact@ncsbn.org).

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## Frequently Asked Questions

## Related to Discipline, Investigations, and Complaints

### Who can file a complaint against a nurse?

Anyone, including a public citizen, patient, family member, co-worker, employer, facility, other regulatory agencies, and even the Board, may file a complaint against a licensed nurse for alleged violations of the Nurse Practices Act. Any person who has knowledge of conduct by a licensed nurse that may have violated a nursing law or rule in North Dakota may report the alleged violation to the North Dakota Board of Nursing.

However, as stated in the Nurse Practices Act (NDCC 43-12.1-11), the law mandates licensees to report to the Board any knowledge of the performance by others those acts or omissions that are violations of the Nurse Practices Act or grounds for disciplinary action set forth in NDCC 43-12.1-14.

### How do I know what to include with my complaint?

The complaint form may be obtained from the North Dakota Board of Nursing website at [www.ndbon.org](http://www.ndbon.org); click on forms, then Potential Violation Report. When submitting a complaint to the Board of Nursing, submit the form in the most complete manner possible and include a written synopsis of the nature of the complaint with detail.

### What happens once a complaint is filed?

- When a request for investigation is received by the North Dakota Board of Nursing, the information is reviewed to determine whether jurisdiction exists and whether the alleged practice or behavior, if true, violates the law or regulations that govern the licensee's practice. Once these two conditions are met, an

investigation is initiated.

- The nurse is notified of the complaint and asked to submit a written response to the board.
- The pending matter is investigated, interviews are conducted, records are obtained, and evidence is reviewed.
- The completed investigation is reviewed by the Disciplinary Review Panel of the North Dakota Board of Nursing to determine if evidence exists to support a violation of the Nurse Practices Act.
  - Cases that are dismissed due to lack of evidence to support a violation of the Nurse Practices Act are resolved at this level.
  - If the evidence obtained during the investigation supports the allegations of a violation of the Nurse Practices Act, a disciplinary settlement may be discussed with the licensee, outlining the facts of the violations and the appropriate sanctions.
- All disciplinary actions must be taken to the Board of Nursing for final action.

### What disciplinary sanctions can the Board of Nursing impose against a licensee?

The Board can impose various disciplinary sanctions against a nurse for violations of the Nurse Practices Act, including, reprimand, probation, suspension, revocation, surrender, and emergency suspension. Additionally, penalty fees for each

separate violation may be imposed against the licensee following any disciplinary action. Costs and disbursements, including witness fees, and reimbursement of the board's expenses in any administrative hearing or other proceeding, may be recovered from the licensee following any disciplinary action.

### How long will it take to resolve a complaint?

Depending on the complexity and nature of the case, availability of information, coordination and cooperation of witnesses and the licensee, the disciplinary process, including the investigation, proceeding, and disposition of a case, can take anywhere from a few weeks to several months to a year or more. Each case is unique and needs to be considered on its own merits. On average, cases are resolved within 45-60 days from the date they are received in the board office until the date the investigation is completed and the matter is resolved.

### Can a nurse continue to practice nursing while there is a pending investigation against him/her?

The ability to continue nursing practice during an investigation is permissible as long as the nurse who is under investigation maintains a current nursing license and there is no evidence of immediate threat to patient safety.

### Is there a timeframe requirement to file a complaint?

The North Dakota Board of Nursing does not have a time limit to file a complaint. However, complaints that are not submitted in a timely manner may be more difficult to investigate.

**Will the nurse know who submitted the complaint?**

The person named in the allegation may be given a copy of the Potential Violation Report in order for the Respondent to submit a written response to the allegations. Such document may be an open or public record under NDCC 44-04-18. However, if disclosure of the identity of the complainant poses a risk to the person making the complaint, the complainant's identifying information may be redacted.

**What may happen to the nurse?**

The mission of the North Dakota Board of Nursing is to protect the public. The disciplinary staff aim to accurately and efficiently investigate every complaint in a fair and appropriate manner. If the Board determines that the nurse who has engaged in activities with the potential for endangering the health, safety, and welfare of the

public needs to be monitored or separated from nursing practice, a variety of actions may be initiated, taking into consideration the potential risk of harm to patients as well as mitigating and aggravating circumstances in the nursing care delivery system. Most disciplinary cases are resolved with an informal stipulated settlement. This type of settlement agreement between the

nurse and the Board eliminates the need for an administrative hearing. However, if the nurse contests the charges, a formal complaint is filed and an administrative hearing is scheduled before an administrative law judge. Following the hearing, the administrative hearing officer makes a recommendation to the Board with the final decision made by the Board of Nursing.

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## Nurses with Fifty Years of Service

The North Dakota Board of Nursing recognized nurses who have served the profession for the past 50 years with certificates. The following nurses were on the list of nurses:

JOYCE DIEDE, LPN – FARGO, ND

ROSEMARY HAUFF, RN – LEHR, ND

MARLYS KRAMER, LPN – BISMARCK, ND

MARDELLE HELM, RN – ANAMOOSE, ND

ANNETTE SCHAFER, LPN – PORTLAND, ND

MAYSIL MALARD, RN – BISMARCK, ND

VIOLA SPRENGER, LPN – ELGIN, ND

SHEILA SCHROEDER, RN – HARVEY, ND

JOANN WEIGEL, LPN – BISMARCK, ND

SARA VANDAL, RN – GRAND FORKS, ND

The certificate acknowledges the 50 years of active licensure in North Dakota as either an RN or LPN. We take great pleasure in marking this special achievement. Thank you so much to the nurses and their dedication to the profession of nursing. Congratulations!

## Addressing the National Transportation Safety Board Recommendations for State Licensing Boards

Dr. Stacey Pfenning DNP APRN FNP

The National Transportation Safety Board (NTSB), an independent federal agency appointed by Congress, was charged with investigating all civil aviation accidents in the United States, as well as significant incidents involving other modes of transportation. The NTSB issued recommendations to all states in September 2014. The recommendations outlined the results of the NTSB safety study, *“Drug Use Trends in Aviation: Assessing the Risk for Pilot Impairment.”* In November 2015, the NTSB sent a follow-up letter to Governor Jack Dalrymple outlining safety recommendations I-14-1 and I-14-2 and requesting contributions from the state licensing boards.

The NTSB recommendation I-14-1 urged development of state guidelines for licensees addressing inclusion of patient education on the effects of medical conditions and medication use (specifically controlled substances) on the ability to safely operate a vehicle in any mode of transportation. The NTSB I-14-2 requested publication of these safety highlights in state licensing board newsletters and websites.

To address NTSB I-14-1, the North Dakota Board of Nursing Administrative Code (NDAC) articles 54-05-01, 54-05-02, and 54-05-03.1 contain rules on scope of practice detailing licensee responsibility to participate in or provide health teaching for all aspects of a patient's care plan, including any treatment regimen. The “Scope of Practice” rules are available at <http://www.legis.nd.gov/information/acdata/html/54-05.html>. Additionally, the Board of Nursing adopted the practice statement titled, *“Role of the Nurse in Pain Management”* in 2006 with review/revision in 2012. This practice statement further safeguards public health and safety by providing specific guidance and regulation to nurses involved in the management of pain, including patient assessment, implementation, and teaching about their pain medication regimen. Currently, the Board of Nursing is collaborating with other licensing boards in the state to complete the rule-making process regulating the use of the Prescription Drug Monitoring Program by prescribers, which promotes monitoring of patient controlled substance regimen with the aim of reducing misuse, overuse, and abuse of these medications.

The NTSB recommendation I-14-2 requested licensing boards to publish the importance of licensee's routinely discussing the effect of patient's medical conditions and drug regimen on their ability to operate vehicles safely, with focus on controlled substances. To meet this recommendation, the paper titled, *“Evidence That Pilots are Increasingly Using Over-the-Counter, Prescription, and Illicit Drugs”* will be included in this edition of the Dakota Nursing Connection. This publication

will also be available on the North Dakota Board of Nursing website at [www.ndbon.org](http://www.ndbon.org) under News.

### **Evidence That Pilots Are Increasingly Using Over-the-Counter, Prescription, and Illicit Drugs**

*Article from NTSB to Governor reprinted with permission*

The National Transportation Safety Board (NTSB) recently analyzed toxicology tests from 6,677 pilots who died in a total of 6,597 aviation accidents between 1990 and 2012. The results demonstrate a significant increase in the use of a variety of potentially impairing drugs.

The study found significantly increasing trends in pilots' use of all drugs, potentially impairing drugs (those with a US Food and Drug Administration warning about sedation or behavior changes in routine use), controlled substances, and illicit drugs (those defined as Schedule I by the US Drug Enforcement Administration). The final report, *Drug Use Trends in Aviation: Assessing the Risk of Pilot Impairment*, is available on the NTSB's Safety Studies web page under report number SS-14/01.

In this study, the pilot was considered to be positive for a drug if it could be qualitatively or quantitatively identified in blood or tissue; drugs identified only in urine or used as part of resuscitative efforts were excluded.

Overall, 98% of the study pilots were male and 96% were flying privately rather than for commercial purposes. The average age of study pilots increased from 46 to 57 years over the study period.

Over the course of the study, for fatally injured pilots, the following was found:

The proportion of pilots testing positive for at least one drug increased from 10% to 40%.

More than 20% of all pilots from 2008-2012 were positive for a potentially impairing drug, and 6% of all pilots were positive for more than one potentially impairing drug.

Overall, the most common potentially impairing drug pilots had used was diphenhydramine, a sedating antihistamine (the active ingredient in many Benadryl and Unisom products).

During the most recent 5 years studied, 8% of all pilots tested positive for controlled substances; hydrocodone and diazepam each accounted for 20% of the positive findings.

The percentage of pilots testing positive for

marijuana use increased to about 3% during the study period, mostly in the last 10 years.

The large increase in the proportion of fatally injured pilots with evidence of potentially impairing drugs suggests an increasing risk of impairment

in general aviation. Aviation is the only transportation mode in which a fatally injured operator (pilot) routinely undergoes extensive toxicology testing; no similar testing is routinely performed for fatally injured operators of boats, trains, trucks, or cars. Given the general increase in drug use in the population, it is likely that there has been a similar

trend in drug use among operators across all modes of transportation.

These results highlight the importance of routine discussions between health care providers and pharmacists and their patients about the potential risks that drugs and medical conditions can create when patients are operating a vehicle in any mode of transportation.

## Attention –Check Your North Dakota UAP/MA Expiration Dates Unlicensed Assistive Person/Technician and Medication Assistant III Expiration/Renewal

- ◆ Unlicensed Assistive Person/ Technician and Medication Assistant III who have a registration expiration date of June 30, 2016 will be mailed postcards in April 2016 notifying them to go to the ND Board of Nursing website ([www.ndbon.org](http://www.ndbon.org)) for renewal. **RENEWAL WILL ONLY BE AVAILABLE ONLINE. NO PAPER RENEWALS WILL BE AVAILABLE.**
- ◆ Failure to receive a renewal notice does not relieve an Unlicensed Assistive Person/Technician or Medication Assistant III of the obligation to renew his/her registration before the expiration date.
- ◆ Unlicensed Assistive Person/ Technician and Medication Assistant III have the responsibility of notifying the ND Board of Nursing of any address changes.
- ◆ If an Unlicensed Assistive Person/ Technician and/or Medication Assistant III assists in the practice of nursing without a current registration, he/she may be assessed additional fees.
- ◆ The Unlicensed Assistive Person/ Technician/Medication Assistant III will be required to validate continued competency by providing one of the following:
  - Current Employer Verification -

- Current Employers Name, City, State
- Past Employment Verification – (employment must have occurred in the last two years)  
Past Employers Name, City, State and Dates of Employment
  - Licensed Nurse Verification (independent from applicant

- employment setting)  
Licensed Nurse Name, RN/LPN  
License Number, RN/LPN  
License Expiration, Date of Competence Verification
- Verification of current certification or registration by board-recognized national bodies.



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## Frequently Asked Questions

## Requirements for Licensure by Examination

## APPLICATION PROCESSING

**When am I made "Eligible for Licensure by Examination?"**

In order to be made eligible to test **AND** be issued a work authorization to practice as a graduate nurse, the following must be received in the board office:

- ◆ On-line application for license by examination and \$130.00 nonrefundable fee (\$110.00 application fee and \$20.00 CHRC Fee) payable by credit or debit card, Paypal account or checking account routing numbers.
- ◆ Official transcripts from nursing program with the degree posted; and
- ◆ Registration from NCLEX Candidates Services for testing (\$200.00 fee required)

**What do I do if I have a name or address change?**

Address and name changes can be made on this website under NURSE LICENSURE, DEMOGRAPHIC UPDATES.

**What are the payment options and what do I do if I do not have a credit card or debit card?**

You may use a Visa, MasterCard or Discover credit or debit cards, checking account information, or a Paypal account. If you do not have any credit cards or a bank account, you can purchase a Visa, MasterCard or Discover gift card at many banks or credit unions or at discount stores such as WalMart and CVS Pharmacy for the purpose of paying for the on-line application.

**What if I am claiming another compact state as my primary state of residence?**

If you claim another compact state as your primary state of residence, you will need to apply for license by examination in your primary state

of residence. If you change your primary state of residence at a later date, you can apply for license by endorsement in ND. See [www.ncsbn.org](http://www.ncsbn.org) for a current list of compact states.

## SCHEDULING TO TEST

**When can I schedule my appointment?**

An Authorization to Test (ATT) is required to schedule your appointment. Once you've been made eligible for licensure by examination by the Board of Nursing, your ATT will be e-mailed to you by Pearson Vue.

**How long is the ATT valid?**

The authorization to test is valid for ninety (90) days.

**How soon will I be able to test?**

You are guaranteed to be offered a testing date within thirty (30) days of the time you call the Pearson Test Center. If the test center offers a date within the 30 days and you decline that date, the test center has met their contractual obligation. Please contact the board office if you have any problems scheduling your test.

**What happens if I need to reschedule?**

If you need to change your appointment, you must contact NCLEX Candidate Services one full business day (24 hours) prior to your scheduled appointment.

**Is there a practice test?**

Yes, there is a tutorial available on the test vendor website at [www.pearsonvue.com/nclex](http://www.pearsonvue.com/nclex).

## WORK AUTHORIZATION AND PRACTICE AS A GRADUATE NURSE

**When do I get my Work authorization to practice as a graduate nurse?**

When the ND Board of Nursing has made you eligible for licensure

by examination, your work authorization will be issued. A paper work authorization will not be mailed. Your work authorization number, issue date and expiration date will be posted on our website. You can check our website at [www.ndbon.org](http://www.ndbon.org) – click on the Verify Tab.

**When can I start working as a graduate nurse?**

Your work authorization must be issued before you start practicing as a graduate nurse or attend any orientation sessions.

**How long is a work authorization valid?**

The work authorization is valid for 90 days, or until you are notified of the test results, whichever occurs first.

**Can anyone get a work authorization?**

You must complete the application for licensure process within sixty (60) days of graduation in order to be eligible to receive a graduate nurse work authorization.

**Will I receive a work authorization by mail?**

No. Work authorizations will be posted on our website for applicants and employers to access.

## CRIMINAL HISTORY RECORD CHECK

**How do I apply for a criminal history record check (CHRC)?**

After you complete your application for licensure by examination, click on the Criminal History Record Check link. Print and complete the CHRC Form provided on the link and CAREFULLY follow the instructions for fingerprinting as listed under Option #1 or Option #2.

### ***How long does the fingerprinting process take?***

Both federal and state checks will be performed. If fingerprints are not adequate for identification purposes for BCI, new cards will be required for a second set of prints. If the second set of prints are not adequate for identification purposes, a name search will be requested. Processing time averages ten days if first set of fingerprints are adequate.

### **OBTAINING RESULTS AND LICENSURE**

#### ***How soon will my results be available?***

Your unofficial examination results are available through NCLEX Quick Results Service offered by the test service. You can access your unofficial results via the internet at [www.pearsonvue.com/nclex](http://www.pearsonvue.com/nclex) and sign in with a user name and password. Choose "Current Activity," then "Recent Appointments," and then "Status." After entering a credit card number the unofficial results will be displayed. The fee for this service will be listed on the website. Your credit card will only be charged if your results are available.

The examination results are mailed to you from the board office within 7 days of your testing. The board office makes every effort to mail the results within 48 hours of your testing. **DO NOT CALL** the board office for your test results, as we are unable to release them over the phone or to your employer. If you pass, you will receive a license to practice as a nurse.

Your Criminal History Record Check must be completed prior to your license being issued.

#### ***Can I find out if I passed or failed using the board's website?***

You can access the board's website to see if a license has been issued. If a license is not showing

for you, it does not necessarily mean that you've failed. It is possible that a license has not yet been issued for you. After the results have been processed, the license verification will show a license number if you passed, or the work authorization will be expired if you failed. **DO NOT CALL** the board office for confirmation, we cannot release pass/fail results by phone.

#### ***Can I start practicing as a nurse once I received my unofficial results that I passed?***

No. You cannot start practicing as a nurse until you have been issued a license by the board of nursing. Licenses can be viewed in the "Verify" Section of the Board website.

#### ***When will my license expire?***

Effective 4/1/2014, applicants for initial license by examination shall receive a license expiring on 12/31 of the following year as part of the application fee.

#### ***What if I fail?***

If you fail, you will receive a diagnostic profile of your areas of weakness, and the required documents to submit for retesting. You are able to retest 45 days after your original test date. The retesting application can be submitted on-line prior to that date for processing.

#### ***Can I continue to work as a graduate nurse if I fail the NCLEX?***

No. Your Graduate Work Authorization becomes invalid when you receive the examination results. A candidate who fails the licensing examination may not be employed in a position with functions that are usually assigned to licensed nurses. You are NOT able to continue to practice as a graduate nurse.

## Are you a licensed RN or LPN who is looking for a career change?

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To safeguard life, health, and the public welfare, and to protect citizens from unauthorized, unqualified, and improper application of nursing education programs and nursing practices, in accordance with SDCL 36-9 and SDCL 36-9A.

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**Next scheduled Board of Nursing Meetings, to be held in Sioux Falls, South Dakota:**

**Meeting date:**

**April 21-22**

**June 9-10**

**September 8-9**

**November 17-18**

All licensure forms, the Nurse Practice Act and contact information is available on the South Dakota Board of Nursing Website at [www.sdnursing.gov](http://www.sdnursing.gov)

**Board Staff Directory**

**Gloria Damgaard, MS, RN, FRE**

Executive Director

[gloria.damgaard@state.sd.us](mailto:gloria.damgaard@state.sd.us) / (605) 362-2765

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<b>Erin Matthes</b> Licensure Operations Manager	<a href="mailto:erin.matthes@state.sd.us">erin.matthes@state.sd.us</a> (605) 362-3546
<b>Robert Garrigan, Business Manager</b> Regarding NCLEX Examination.	<a href="mailto:robert.garrigan@state.sd.us">robert.garrigan@state.sd.us</a> (605) 362-2766
<b>Ashley Kroger</b> Program Assistant	<a href="mailto:ashley.kroger@state.sd.us">ashley.kroger@state.sd.us</a> (605) 362-2760
<b>Jill Vanderbush</b> Licensure Specialist	<a href="mailto:jill.vanderbush@state.sd.us">jill.vanderbush@state.sd.us</a> (605) 362-2769

**DISCIPLINARY ACTIONS TAKEN BY THE SOUTH DAKOTA BOARD OF NURSING**

**February 2016**

Christopher Alan Baartman, R035872.....	Voluntary Surrender
Michael James Broadbent, NY RN614648.....	Deny Licensure
Sierra Lynne Cates, P011710 .....	Summary Suspension
Jannica Dawn Daniell, TX 742892 .....	Letter of Reprimand + Remediation
Sonya Ragene Fisher, P009193 .....	Probation
Walter Thomas Flagg, P010909 .....	Letter of Reprimand
Ayana Capri Hardiman-Davis, P011724 .....	Summary Suspension
Teresa Jo Janis, P009682 .....	Letter of Reprimand
Heather Jean Thomas, R035409 .....	Summary Suspension
Robin L. Thompson, R021487 .....	Letter of Reprimand
Lacey Jean Wamke, R040614 .....	Summary Suspension
Christopher Erin Kyle, R042473 .....	Suspension
Carol Ann Kindvall, SD RN Applicant.....	Deny Licensure

**Attn: Medication Administration Training Program Renewal Deadline is April 30, 2016. See SD BON website for details <http://doh.sd.gov/Boards/Nursing/>**

continued from page 4

Enhanced NLC does not take effect until it has been enacted in 26 states or by December 31, 2018. The current compact and the laws and rules that govern it remain in force until that time. The Board of Nursing will be in communication with nurses and employers of nurses prior to the implementation of the Enhanced NLC.

Senate Bill 29 also contained amendments to update the Nurse Practice Act to reflect current operations of the Board of Nursing and current nursing practice. SDCL36-9-3 and 36-9-4 were amended to update the scope of practice for RNs and LPNs. These statutes had not been updated since 1976 for LPNs and 1986 for RNs. The new language for the scope of practice of a registered nurse includes:

- Providing comprehensive nursing assessment of the health status of patients
- Collaborating with the health care team to develop and coordinate an integrate patient-centered health care plan
- Developing the comprehensive patient-centered health care plan including:
- Establishing nursing diagnosis
  - Setting goals to meet identified health care needs;
  - Prescribing nursing interventions
- Implementing nursing care through the execution of independent nursing strategies and the provision of regimens requested, ordered, or prescribed by authorized health care providers
- Evaluating responses to interventions and the effectiveness of the plan of care
- Providing for the maintenance of safe and effective nursing care
- Designing and implementing teaching plans based on patient needs
- Delegating and assigning nursing interventions to implement the plan of care
- Providing for the maintenance of

safe and effective nursing care rendered directly or indirectly

- Advocating for the best interest of the patient
- Communicating and collaborating with other health care providers in the management of health care and the implementation of the total health care regimen within and across settings
- Managing, supervising, and evaluating the practice of nursing
- Teaching the theory and practice of nursing
- Participating in development of health care policies, procedures, and systems; and
- Other acts that require education and training consistent with professional standards as prescribed by the board, by rules promulgated pursuant to chapter 1-26 and commensurate with the registered nurse's education, demonstrated competence and experience

Changes to the LPN Scope of Practice statutes include language that a licensed practical nurse practices under the supervision of a registered nurse, advanced practice registered nurse, licensed physician, or other health care provider authorized by the state. A licensed practical nurse is guided by nursing standards established or recognized by the board and include:

- Collecting data and conducting a focused nursing assessment of the health status of a patient
- Participating with other health care providers in the development and modification of the patient –centered health care plan
- Implementing nursing interventions within a patient-centered health care plan
- Assisting in the evaluation of responses to interventions
- Providing for the maintenance of safe and effective nursing care rendered directly or indirectly
- Advocating for the best interest

of the patient

- Communicating and collaborating with patients and members of the health care team
- Assisting with health counseling and teaching
- Delegating and assigning nursing interventions to implement the plan of care and
- Other acts that require education and training consistent with professional standards as prescribed by the board, by rules promulgated pursuant to chapter 1-26 and commensurate with the registered nurse's education, demonstrated competence and experience

#### A focused nursing assessment

means recognizing patient characteristics by a licensed practical nurse that may affect the patient's health status, gathering and recording assessment data, and demonstrating attentiveness by observing, monitoring, and reporting signs, symptoms, and changes in patient condition in an ongoing manner to the supervising health care provider.

SDCL 36-9-49 was amended to change two of the grounds for disciplinary action. SDCL 36-9-4 now reads; committed an alcohol or drug related act or offense that interferes with the ability to practice nursing safely. SDCL 36-9-10 reads; engaged in unsafe nursing practice, substandard care, or unprofessional conduct.

The amendments to the practice act are effective as of July 1, 2016. The newly amended Nurse Practice Act will be publicly available on our web-site after this date. If you would like copies of any of the enacted changes prior to that time, please contact the Board of Nursing for assistance. As always, we welcome your feedback on any of these amendments. I will be in touch with you again during the summer.

*Aloria Damgaard*

# Medication Aide Registration and Training Program Approval Requirements

## Medication Aide Registration

The South Dakota Board of Nursing implemented the Medication Aide Registry on May 1st, 2015 following the promulgation of new rules in ARSD 20:48:04.01 requiring the registration of medication aides and passage of the Board of Nursing final exam. As of April 8, 2016 the Board has registered 4,669 unlicensed medication aides (UMA).

Following the implementation of the new rules, **licensed nurses practicing in South Dakota may only delegate medication administration to UMAs listed on the South Dakota Board of Nursing's registry.** Registry status may be verified on the Board's website: <https://www.sduap.org/verify/>. If a person is not listed a nurse may not delegate medication administration to that person. Information on how an unlicensed person may become registered is located on the Board's website: <http://doh.sd.gov/boards/nursing/MATPAapproval.aspx>.

UMA registration will remain active for two years after the date of issue to a UMA registrant. The UMA should keep their personal contact information updated on the board's registry site as a courtesy renewal notice will be sent 90 days prior to the UMA's registration expiration date. **Renewal requirements and application will be posted on the Board's website in 2017.**

It is important that nurses and employers recognize that the Board's registry *only* provides assurance that individuals listed have met minimal criteria including the completion of required training and testing to allow them to accept the delegated task of medication administration from a licensed RN or LPN while under nurse supervision. **Registry status does NOT imply that an individual has met moral, ethical, or legal standards and should not take the place of an employer's hiring screening process or background check.**

## Medication Aide Training Program Renewal

Unlicensed medication aide personnel are required to complete a 20-hour South Dakota Board of Nursing (SDBON) approved Medication Administration Training Program (MATP), taught by a licensed RN with a minimum of 2 years experience. **Approval of a MATP is granted for a 2-year period and all training programs expire and need to be renewed prior to April 30, 2016.** Requests for faculty or curriculum changes must also be pre-approved by the Board. The approval process, application forms, and the list of all approved programs are located on the Board's website: <http://doh.sd.gov/boards/nursing/MATPAapproval.aspx>.

## FAQ Medication Aide Training, Testing, & Registration

### Training

**1. If I hire an individual that is not registered as a UMA but who has previously completed a SDBON approved medication aide training program (MATP) at another facility, does that individual need to repeat or re-take the course?**

**Answer:** Most often, no, the new employee should provide the employer with a copy of their MATP certificate for the employer's records. If the individual does not have a copy, request a copy from the program they attended, if not available, request other evidence such as an attendance roster. (All approved programs are required to maintain records of student completion.) Upon receipt of the certificate, have the new employee complete a competency validation with an RN to verify the employee can safely perform the skills listed on the BON's approved skills competency checklist (<http://doh.sd.gov/boards/nursing/assets/ClinicalSkillsChecklist.pdf>). Once completed, the employee must then become registered as a UMA; this

includes passing the Board's final exam. *If the individual fails the exam, the individual must then re-take a SDBON approved MATP.* The UMA registration application is available at: <http://doh.sd.gov/boards/nursing/MATPAapproval.aspx>.

**2. If I hire an individual that worked at a group home or community setting licensed by the Division of Developmental Disabilities, Department of Human Services do they need to re-take medication aide training?**

**Answer:** Yes. The training is not considered equivalent; a 20-hour SD Board of Nursing approved MATP must be completed before the individual will be allowed to take the Board's final exam and be registered as a UMA.

**3. If I hire a nursing student does she need to complete a BON approved 20-hour MATP?**

**Answer:** Nursing students may apply to waive the 16-hour course content portion of the required 20-hour MATP. The student must have successfully completed a pharmacology course and/or fundamentals in nursing course that included theory, lab, and clinical content in the area of medication administration. The student is required to complete the 4-hour clinical/lab portion of the training with an RN to verify the student's competency to perform all skills listed on the Board's approved skills competency checklist. The student must also become registered as a UMA; this will include passing the Board's final exam. *If the student fails the exam, the student must take a Board approved MATP.*

**4. If I hire an individual that worked as a medication aide in another state does she need to complete a BON approved 20-hour MATP?**

**Answer:** Individuals who have completed an equivalent MATP of at least 20 hours in length and who are currently registered as a medication

aide in another state may apply by endorsement and request to waive the 16-hour course content portion of the 20-hour MATP. The applicant must still complete the 4-hour clinical/lab portion of the required training with an RN to verify that the individual is capable of performing all skills listed on the SDBON approved skills competency checklist safely and competently. Once the 4-hour lab portion is complete the employee must also become registered as a UMA; this will include passing the Board's final exam. *If the employee fails the exam, she must take a Board approved MATP.*

**5. Can others, such as a pharmacy tech or EMT, also waive the 16-hour MATP requirement?**

**Answer:** No. The training is not considered equivalent because administering medications in nursing settings is different than the duties they were educationally prepared to provide. Therefore, these individuals need to complete a 20-hour approved MATP program, pass the Board's final exam, and be registered as a UMA.

Board of Nursing Final Exam

**6. Is there a fee for the exam?**

**Answer:** No.

**7. What is on the exam?**

**Answer:** The exam is comprised of 65 multiple choice questions. The test plan, located on the Board's website, provides a description of the content covered on the exam. The Board will not provide RN instructors with a copy of the exam or individual questions.

**8. What is the percentage needed to pass the exam?**

**Answer:** The Board appointed an exam writing committee comprised of nurses practicing in settings where medication aides typically work. The committee carefully wrote questions, weighted exam content to determine the number of questions for each of the 5 exam content areas, and determined the minimal passing score to assure an applicant has the minimum level of knowledge to administer medications safely. Following the exam applicants are provided the results of their exam as either "pass" or

"fail", no score or percentage is provided.

**9. How many times can an applicant take the exam?**

**Answer:** If an applicant fails the exam on the first attempt she may take it a second time. If the applicant fails on the second attempt the applicant should repeat the 20-hour training course.

Exam Proctor

**10. Why does an applicant need a proctor to take the exam?**

**Answer:** Proctors are individuals approved by the South Dakota Board of Nursing; they are needed in order to supervise the online administration of the Board's UMA and Unlicensed Diabetes Aide (UDA) exams. Proctors must sign a *Proctor Agreement Form*, <http://doh.sd.gov/boards/nursing/documents/ProctorAgreementForm.pdf>, and agree to adhere to the terms listed in the agreement form when administering the online exams, e.g. safeguarding the confidentiality of the exam, not disclosing any portion of the exam, reporting known or suspected breaches in security of the exam, and ensuring a secure testing environment.

**11. Does the Board of Nursing share a list of proctors for the online UMA and UDA exams?**

**Answer:** Yes, however *only* the name of the proctor and his/her expiration status is shared.

**12. If an applicant needs a proctor, will the Board provide the applicant or employer the contact information of approved proctors?**

**Answer:** No, the applicant or employer is accountable to find their own proctor.

**13. Can a proctor administer the exam to a friend, relative, spouse, colleague (e.g. another medication aide), or a supervisor/manager (e.g. facility administrator or owner of facility)?**

**Answer:** No they may not. It is the proctor's responsibility to determine if their relationship with an applicant would be that of a "friend or colleague". The reason the Board does not want a person to proctor an applicant that is their friend or colleague is because the proctor may

be placed in a position of not being able to follow all of the guidelines listed in the *Proctor Agreement Form*.

**14. Can a proctor charge for their time?**

**Answer:** This is not a Board decision, if a proctor wishes to charge a fee for their service it is the applicant and/or employer's decision as to whether to pay the person to be a proctor. The Board does not require that fees be paid to a proctor.

**15. Can a proctor administer the test to more than one UDA and/or UMA applicant at a time?**

**Answer:** It is the proctor's responsibility to determine if they will be able to proctor more than one applicant at a time. A proctor may choose to do so if the proctor is able to meet all requirements listed on the *Proctor Approval Form* while administering the exam.

**For other questions or for more information contact Ashley.Kroger@state.sd.us.**

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# Social Media Policies for Employers and Employees: Regulatory and Statutory Considerations

*Dann W. Brown, JD, RN, CPPS, CPHRM, FASHRM*

To prevent negative posts on social media by employees, some organizations have developed social media policies. But creating effective policies designed to control employees' online activities requires an understanding of the current laws regarding social media and the responsibilities of both employees and employers. This article provides an up-to-date analysis of the relevant regulations and statutes that will guide leaders who are creating or revising their social media policies.

**Social media** are the "forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content" (Merriam-Webster, 2015). These forms of communication have become conduits for public discourse about almost any issue, including grievances related to the workplace. For virtually no cost, social media allow one or two dedicated people to post content that can have a devastating impact. Factual accuracy is not a prerequisite.

Understandably, employers are concerned about preventing negative posts, and some have developed social media policies to control employees' online activity. Certain elements of these policies define how employees should identify their affiliation with the organization, the tone of language they should use, and limitations on the type of information an employee may share. Often, these policies are drafted without an awareness of the relevant statutes and regulations; however, even a well-intentioned statement indicating that all postings should use a civil tone can run afoul of a statute.

Suppose a staff nurse shows a manager a printout of a social media posting by another nurse. The post reads: "My boss is *INCOMPETENT! Who assigns a nurse eight patients down three different hallways???*" The printout also shows other employees liked the post.

The manager has several questions to consider. Is the facility mentioned by name? Can the employer otherwise be identified? Does the post violate the organization's social media policy? Is the post offensive? Is it insubordinate? Should the organization respond to the post? If so, how and who should respond? Should the manager take action against the nurse? If so, what action is appropriate? Did the nurse violate patient privacy? Did the nurse violate the state nurse practice act (NPA)? Is the nurse's speech protected? Can the poster claim other legal protections? What, if anything, should be done about the employees who liked the post?

These are just a few of the questions that should be considered when an organization is drafting a policy or is made aware of posts by employees. Although policies should address multiple types of postings, this article will focus on negative postings by employees.

## Federal Stored Communications Act

Often, courts determine that sharing communications with a third party relinquishes the expectation of privacy. Because almost all e-mail is transmitted through and stored by an outside company, the design of the system automatically turns over all communications to a third party. Thus, a court that applied this traditional reasoning would likely rule that

all e-mail communication is unprotected. To prevent such rulings, Congress enacted the Federal Stored Communications Act (SCA) (18 U.S. Code, 2010, Chapter 121 §§ 2701–2712) to reflect the current reality of electronic communications and ensure that the technical nature of the operating systems did not create an automatic erosion of protections.

The SCA also limits the ability of Internet service providers to turn over communications to nongovernment entities (18 U.S. Code, 2010, Chapter 121 § 2702) and prevents employers from improperly accessing the private accounts of employees (18 U.S. Code, 2010, Chapter 121 § 2707). The statute explicitly provides a private right to action to recover damages and reasonable legal fees if a violation occurs (18 U.S. Code, 2010, Chapter 121 § 2707).

The application of the SCA to social media communications was addressed in *Ehling v. Monmouth-Ocean Hospital* (2012; Table 1). In this case, the plaintiff had the privacy settings for her Facebook page set so only friends could see it. The plaintiff included several coworkers but none of her managers as friends. Without her knowledge, a friend was taking screenshots of her posts and sending them to management. When she was disciplined for her posts, she filed suit claiming that the hospital violated the SCA by improperly accessing her Facebook account.

The court found in favor of the hospital because it did not have an active role in obtaining the information. However, the court did hold that nonpublic Facebook wall posts are covered by the SCA. The court stated that because the plaintiff chose privacy settings limiting access to her Facebook friends that her wall posts were covered by the SCA.

The following three features of this case are important:

1. The SCA can be applied to social media postings.
2. The critical question in determining applicability is whether the user took steps to limit access to the information on his or her Facebook walls.
3. The hospital did not obtain the information nor cause it to be obtained.

The last aspect should be included in the training of every organization leader. Any actions by leaders to access information or to cause information to be accessed on their behalf can jeopardize the defense to an SCA claim. Employers should also be mindful when using unsolicited information because the question of responsibility for obtaining it would likely rest on the testimony of the employee who provided it.

## Password Protection Laws

At the time of this writing, 15 states have enacted some form of password protection statute, prohibiting employers

from requiring their employees or applicants to provide passwords to personal accounts or to “friend” them. Eleven other states have current proposals, and 14 more had their efforts fail or die in committee. Only one state, Arkansas, has seen an attempt to repeal or curtail such a statute (Chokshi, 2015).

*Pietrylo v. Hillstone Restaurant Group* (2008) was one of the first cases to address an employer’s use of employees’ passwords. Two employees created a password-protected MySpace page that they used as a forum for grievances against their employer. They invited some coworkers to join the page, but no managers. Management became aware of the site when one of the invited employees showed them a posting. Management twice requested the user ID and password from one of the employees, and eventually she obliged. Management logged into the site a few times and subsequently fired the two site creators for damaging employee morale and violating the restaurant’s core values.

The central issue at trial was whether the employee was coerced into giving up the user ID and password. The employee testified that she felt pressured to hand over the information. The jury found in favor of the employee, and the decision was upheld.

Although this case was not released for publication, it serves as a warning to employers to tread carefully when using social media as an element of a personnel investigation. Even if an employee provides password information, the employer cannot prevent

the employee from subsequently stating that he or she felt pressured to provide it. Without reliable evidence that an employee is damaging the employer’s interests, password-protected sites should be left alone. If damaging information is posted and the employer asks for access, a later claim of coercion by the employee may be weakened, though this approach is not risk-free.

When using social media to evaluate candidates for employment, organizations should create an ethical barrier between those who hire and those who research the social media to prevent protected information from reaching the decision maker. Often, information, such as marital status, religion, and race, is found during the evaluation. The ethical barrier helps prevent the appearance of impropriety regarding such information. Many employers are hiring third parties to conduct these searches to ensure that such information does not accidentally make its way to the decision makers.

### Privacy Laws

The issues regarding the Health Insurance Portability and Accountability Act (HIPAA) are well known, and many resources are available for those interested. However, a number of states have privacy laws or common law precedents that offer additional protections for patients. They may also provide a private right of action.

In *Doe v. Guthrie Clinic* (2014a), a patient attempted to apply HIPAA and state privacy laws against a corporation based on the actions of its employee.

The patient was being treated for a sexually transmitted disease when a nurse employee recognized him as the boyfriend of her sister-in-law. She sent text messages to her sister-in-law, telling her of the patient’s diagnosis and course of treatment. When the patient complained to the clinic, the incident was investigated, and the nurse was fired. The patient then sued the nurse and clinic in federal court.

On appeal, the court ruled that the clinic could not be held liable (*Doe v. Guthrie Clinic*, 2014b), though one judge wrote a dissenting opinion based on the state law claim:

The ease with which confidential patient information can now spread through personal digital devices and across social networks demands a strong legal regime to protect a patient’s confidentiality. A cause of action directly against a medical corporation, unhampered by questions as to whether an employee’s conduct occurred within the scope of employment, ensures the fullest protections for patients and best addresses the current realities of medical service delivery (emphasis added).

This opinion is important because dissenting opinions sometimes become the basis for the passage of new laws, and this opinion addresses how information is electronically captured, stored, and transmitted, which mirrors the legislative intent of the SCA.

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**TABLE 1**  
**Significant Legal Decisions**

Case	Jurisdiction	Importance of the Decision
<i>American Medical Response of Connecticut</i>	NLRB	NLRA applies to social media postings.
<i>Costco Wholesale Corporation</i>	NLRB	Precedential case for applicability to social media.
<i>Doe v. Guthrie Clinic</i>	2nd Circuit	Dissenting opinion: Corporations liable for privacy breach despite employee acting outside scope of employment.
<i>Ehling v. Monmouth-Ocean Hospital</i>	U.S. District Court NJ	Facebook postings are covered by the SCA.
<i>Karl Knauz Motors Inc.</i>	NLRB	Courtesy provisions ran afoul of the NLRA.
<i>Martin Luther Memorial Home Inc.</i>	NLRB	Test for determining NLRA protections.
<i>McKesson Corporation</i>	NLRB	Savings clause is not enough to save an otherwise unlawful policy.
<i>Meyers Industries</i>	U.S. District Court DC	Employee behavior can relinquish NLRA protections.
<i>Pier Sixty LLC</i>	NLRB	Use of profanity does not automatically relinquish NLRA protections.
<i>Pietrylo v. Hillstone Restaurant Group</i>	U.S. District Court NJ	Passwords are protected for employees’ private accounts.
<i>Tasker Healthcare Group</i>	NLRB	Individual gripes are not protected by the NLRA.
<i>Triple Play Sports Bar</i>	NLRB and 2nd Circuit	Use of the “like” button can be considered concerted activity.

Note. NLRB = National Labor Relations Board; NLRA = National Labor Relations Act; SCA = Federal Stored Communications Act

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The dissenting opinion also stated: "As the majority notes, it is the *medical corporation* itself, not merely its employees, *which owes the duty of confidentiality* to the patient" (emphasis added).

News stories about domestic government surveillance programs ("NSA surveillance exposed," n.d.), the hacking of major corporations' customer data (Bertrand, 2014), and the wholesale release of sensitive, personal information stolen from dating sites appear regularly (Weise & Vanden Brook, 2015). The result is strong political pressure for legislatures to enact enhanced protections for personal information. Health care leaders should work with political advocates to limit liability for privacy violations to employers.

Posted pictures and videos create additional privacy concerns because background information may reveal protected health information. Policies against unapproved photographing and videotaping on hospital premises and

enforcement of those policies should be considered.

### National Labor Relations Act

The National Labor Relations Act (NLRA) is often used by employees when challenging the actions of their employers. Congress enacted the NLRA to protect the rights of employees and employers, encourage collective bargaining, and curtail certain private-sector labor and management practices that can harm workers, businesses, and the U.S. economy (National Labor Relations Board [NLRB], 1935). Any employees may file a complaint with the National Labor Relations Board (NLRB, n.d.).

Section 7 of the NLRA states the following regarding the right of employees:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].

Although the statute uses the words "bargain collectively through representatives," NLRA protections are afforded to all nonmanagement employees regardless of union membership. The NLRB considers a rule to be unlawful if it explicitly restricts Section 7 activity or if an employee would reasonably construe the language to prohibit Section 7 activity, the policy was promulgated in response to union activity, or the rule has been applied to restrict Section 7 rights (Martin Luther Memorial Home, Inc., 2004).

In the following cases, the provision regarding an employee reasonably construing the language to prohibit Section 7 was the most widely cited.

Leaders who are drafting social media policies should understand that a policy must be written in a way that employees do not reasonably construe a restriction of their rights. The NLRB stated in the McKesson Corporation (2011) case and through published memorandums (NLRB, 2012) that the use of a savings clause will not save an otherwise unlawful policy.

### Unlawfully Overbroad Policies

The applicability of NLRA protections to social media posts was addressed in *American Medical Response of Connecticut* (2010). In this case, a paramedic posted, "I can't believe they let a 17 be a supervisor." ("17" was the ambulance code for a mental patient.) When the paramedic was brought in for a discussion, her employer denied her union representation. The paramedic then went online and called the employer several unsavory names and was fired shortly thereafter. Upon review of the circumstances, the NLRB filed a complaint against the company.

The NLRB had addressed social media before, but it stood by the employer's right to maintain order in the workplace. The importance of this case is the change in the NLRB's position that social media postings would have the same test applied as inperson statements. The case was settled before trial, and therefore has no precedential value.

However, the *Costco Wholesale Corporation* (2010) decision reiterated the stance of the NLRB in *American Medical Response of Connecticut*. The Costco decision also continued the movement to invalidate facially neutral policy statements applicable to nonunion employees. The main reason cited for invalidating these policies is that an employee could reasonably construe that they restricted his or her Section 7 rights under the NLRA.

Three weeks after the *Costco* decision, a majority of the NLRB invalidated a courtesy provision in the *Karl Knauz Motors Inc.* (2011) case. The three board members agreed that a posting about an auto accident at another dealership was unprotected. However, they disagreed on the lawfulness of the provision that stated employees

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were expected to be “courteous, polite, and friendly” to customers, vendors, and coworkers and that employees should not be “disrespectful, or use profanity or any other language which injures the image or reputation of the Dealership.” The disagreement among board members focused on whether the provision could reasonably be construed by an employee to be prohibiting his or her Section 7 rights. A majority of the board held that an employee “reading this rule would reasonably assume that the Respondent would regard statements of protest or criticism as disrespectful or injurious to the image or reputation of the Dealership,” making the provision “unlawfully overbroad.”

These two cases combined with the statement that a savings clause is insufficient should serve as a warning to employers that the burden is on them to draft policies that are easily understood by employees. Fortunately, the NLRB will read these policies in context, so that prohibitions that use limiting language would likely survive a review. Examples of this type of language can be found in the Walmart policy, which the NLRB has held out as being “not unlawfully overbroad” (NLRB, 2012).

### Liking a Post

Users of some social media platforms have the ability to like a posting. In the *Triple Play Sports Bar* (2014) case, an employee who posted negative comments about management incorrectly determining the amount of taxes withheld from paychecks was fired for “not being loyal enough.” Another employee who liked the posting was fired for the same reason. The novel question in this case was the determination by the NLRB that the simple act of hitting the “like” button was sufficient to rise to the level of protected concerted activity. This finding was upheld in an unpublished summary order by the U.S. 2nd Circuit Court of Appeals.

### Use of Profanity

Although content of speech is protected, the manner, tone, and language used by the employee to

convey the message may be grounds for determining that he or she has relinquished those protections. Suppose a post used the term “\$%!#\* MORON” rather than “complete MORON.” There is precedent stating that the use of profanity, threats, or malicious or physically aggressive behavior in the delivery of that message can be grounds for an employee to lose NLRB protections (*Meyers Industries*, 1986).

However, some recent cases have placed limitations on the application of the precedent (*Pier Sixty, LLC*, 2015). In the *Pier Sixty* (2015) case, an employee posted the following on Facebook at a catering event:

“Bob is such a NASTY “\$%!#\*—— don’t know how to talk to people!!! What a LOSER!! Vote YES for the UNION!!!” (expletives redacted)

The employee challenged his discharge. In ruling in favor of the employee, the two majority members of the NLRB noted that employers and coworkers used profanity routinely in the workplace, making the employee’s use of profanity not unusual. Another factor the board said it would consider in the explanation of its ruling is whether any disciplinary actions taken were typical of those taken against others in similar circumstances or were disproportionate to the offense.

Leaders should not see this ruling as a move towards protecting all profane speech. The ruling indicates that corporate culture plays a role in the analysis. If an organization allows its leaders or others to use similar language without addressing it, there may be grounds for an employee to argue that his or her use of similar language is acceptable in the workplace.

### Individual Gripe

In the *Tasker Healthcare Group* (2012) case, an employee posted “Fire Me...MAKE MY DAY!” The post was in response to the possibility that a returning employee would be made a supervisor. The employee was fired for the post, and subsequently, the NLRB ruled that the action was not protected.

The advice memorandum of the associate general counsel stressed that

no other employees took part in the conversation. The memorandum further noted that to enjoy the protections of the NLRA, the employee’s activity must involve shared concerns about the terms and conditions of employment. In this case, the statement was seen as an individual gripe. This finding sets a boundary and somewhat balances the recent movement towards an expanded reading of protections for employees. Leaders should periodically review NLRB cases and literature for information on new rulings on social media posts and make relevant findings known to the management team.

### Nurse Practice Acts

Nurses often share details about difficult patients and families, involvement in a tough procedure, or the impact that caring for others has on their lives. Though discussion of these issues among fellow staff members can help improve the workplace, posting them online can result in a report to the state board of nursing (BON). Such a posting can create a difficult situation for an employer: The nurse’s posting may be a violation of the NPA even though it falls under the protection of the SCA, NLRA, or other statutes. Although a posting may be protected by one statute, that protection does not supersede violations of other statutes or professional ethics.

Reporting a nurse to the BON is a challenging decision for any leader. It places the employer and employee at odds, risks damaging relationships beyond the individual employee, and risks claims of retaliation (Marsh, 2015). One can easily imagine a scenario in which two nurses post pictures of a patient online: One posts a statement about her wonderful patient, and the other discusses how patients are suffering because of staffing cuts. If only the latter nurse is reported to the BON, a court or jury could determine that the nurse was reported because of the negative message rather than a violation of patient confidentiality.

One method of counteracting claims of disparate treatment is adopting an algorithm to help determine which issues should be reported to the BON. At a minimum, this approach shows an effort

to report to the BON consistently. Sharing the algorithm with hospital staff members during orientation and in-services could further demonstrate evidence of good faith on the part of leaders.

In their role as public protectors, BONs have to find evidence of potential harm to a patient. In the case of a social media posting, this harm could be failing to protect confidential information, alcohol or drug abuse, moral turpitude, or other unprofessional conduct. A literature search of these issues reveals that the most common sections of the NPA at issue are those dealing with patient privacy. A 2010 survey of BONs found that 33 of 46 respondents have received complaints about nurses posting protected health information online. Resulting disciplinary action was reported by 26 of the 33 boards (National Council of State Boards of Nursing, 2011).

To combat the potential for these violations, many BONs as well as the National Council of State Boards of Nursing [NCSBN] have published social media guides that offer general advice to nurses about how to use social media in a manner that does not conflict with the NPA and professional ethics (NCSBN, 2011; Nevada State Board of Nursing, n.d.).

### Whistleblower Protections

A restaurant employee posted a video on YouTube that may be considered an act of whistleblowing (Stuart, 2013). The video showed meat being stored next to a dumpster. The employee claimed that the food was being hidden during an inspection (Stuart, 2013). Then, he posted a second video in which he claimed the food would be given to customers after the inspection (Harris, 2013).

Questions about whether or not this type of posting would be protected under the law are far from settled, and little case law is available. Various whistleblower laws and antiretaliation provisions are most applicable when an employee files a complaint with his or her employer or reports the suspected illegal or unethical behavior internally. Whether or not a court would apply the same protections to an online posting in the absence of these actions has not been widely tested.

### Conclusion

Despite the risks, organizations will use social media. Over 1,500 hospitals in the United States already have a social media presence (Mayo Clinic Center for Social Media, n.d.). Organizations should train managers to navigate social media issues just as they train managers to use other tools.

Committees drafting policies should use the mentioned resources as well as others. Using the Walmart social media policy (NLRB, 2012) as a template should help drafters avoid some issues that arose in the cases discussed. Leaders should also look at how often this policy is reviewed. Many hospitals review policies on a 3-year rotation. Given the fluidity with which the landscape changes, social media policies should be reviewed at least annually.

Much has been written about what motivates people to post information about their employers online. Although some discussion focuses on attention seeking, a large section of the literature focuses on the frustration felt by staff

members when they believe they have no other way to express their grievances to their employers. A communication strategy that actively seeks input of and feedback from employees may be the most effective strategy in the prevention of negative postings.

A well-drafted social media strategy and policy supported by a culture that values open communication about issues concerning employees cannot be overemphasized as an effective approach for minimizing the risk of employees posting negative comments. But if an organization finds itself the subject of such postings, a response plan should be in place. If the response is to call a team together to figure out the next steps, the organization is already behind.

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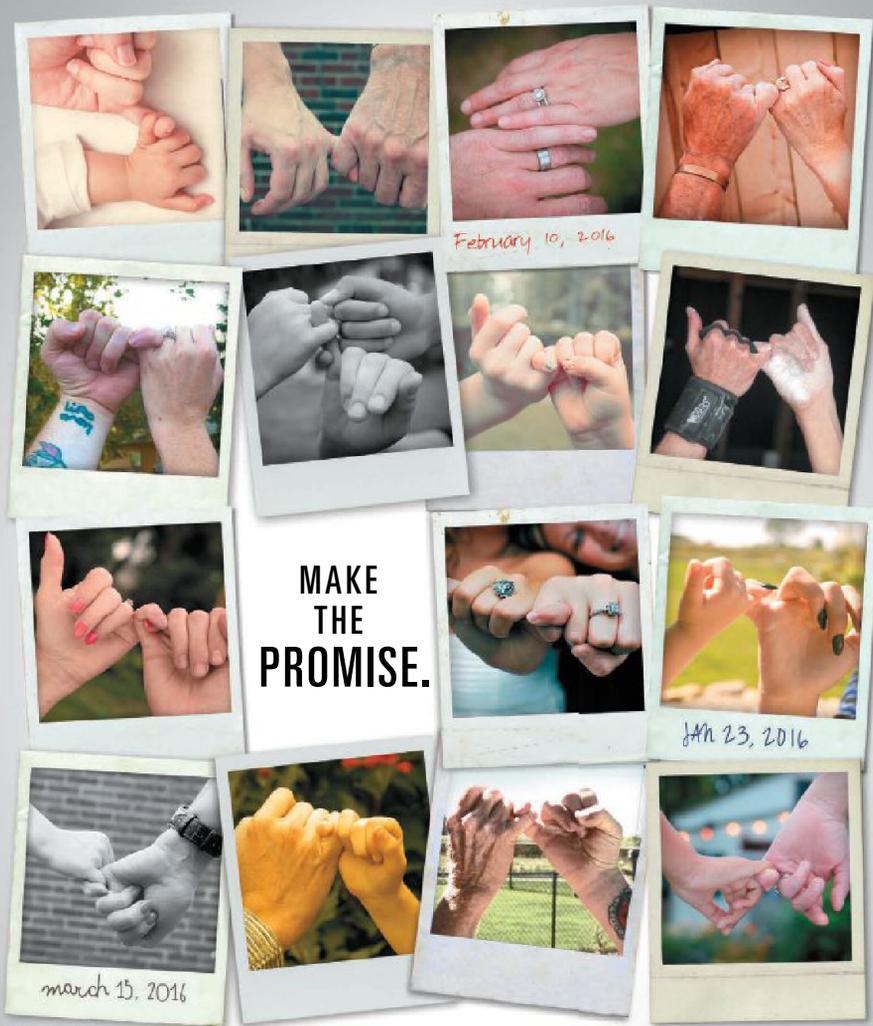
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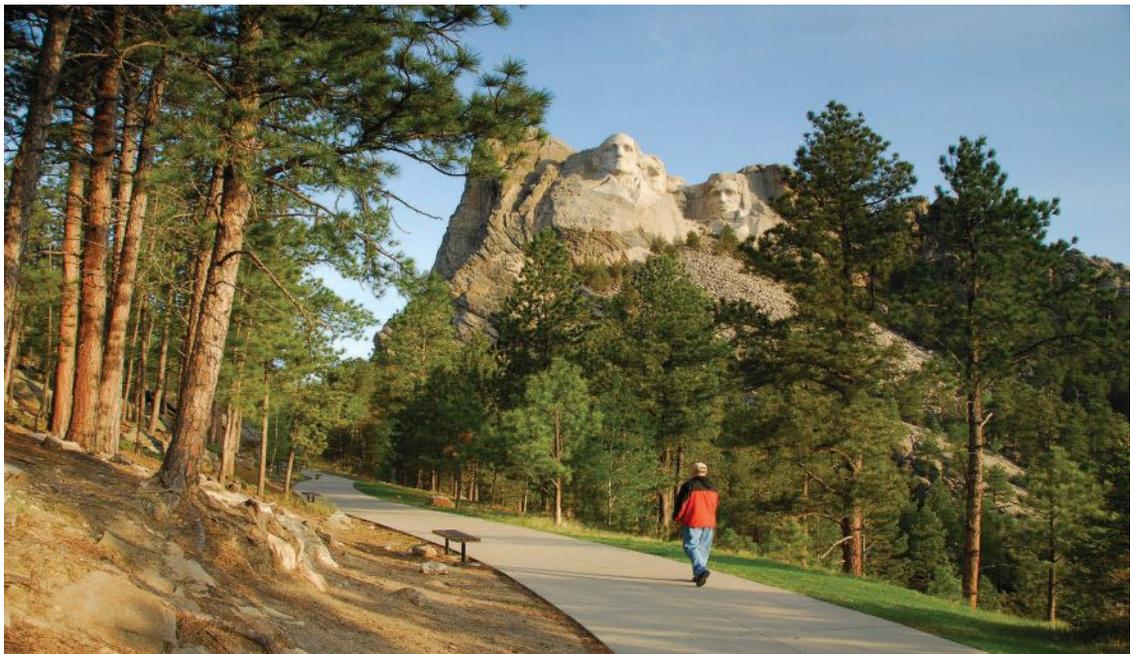
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